

105.014

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PROGRESSIVE NORTHWESTERN
INSURANCE, A/S/O HORTON
BROTHERS OF DELAWARE, INC AND
JACKIE L. LUCAS, JR.

Plaintiffs

vs.

NATIONAL RAILROAD PASSENGER
CORPORATION A/K/A AMTRAK,
RONALD F. ANNONE, AND NORFOLK
SOUTHERN CORPORATION

Defendants/Third Party Plaintiffs

vs.

RHONDA LUCAS AND JACKIE L.
LUCAS, JR.

Third Party Defendants

CIVIL ACTION

NO. 1:05-cv-736

JURY TRIAL DEMANDED
12 JURORS REQUESTED

**DEFENDANTS/THIRD PARTY PLAINTIFFS, NATIONAL RAILROAD
PASSENGER CORPORATION A/K/A AMTRAK, RONALD F. ANNONE, AND
NORFOLK SOUTHERN CORPORATION'S COMPLAINT AGAINST THIRD
PARTY DEFENDANTS RHONDA LUCAS AND JACKIE L. LUCAS**

And now comes Defendant/Third Party Plaintiffs National Railroad Passenger Corporation a/k/a Amtrak, Ronald F. Annone, and Norfolk Southern Corporation, by and through its attorneys, and hereby files this Third Party Complaint against Rhonda Lucas and Jackie L. Lucas, Jr., and avers as follows:

1. The Plaintiff, Progressive Northwestern Insurance a/s/o Horton Brothers of

Delaware, Inc. and Jackie L. Lucas, Jr. filed this lawsuit in the Court of Common Pleas in the County of New Castle, Delaware, upon the filing of a Praecept for Summons and Complaint on September 28, 2005.

2. This suit was filed against Defendants to recover for monetary damages allegedly sustained by Progressive in connection with its alleged payment of property damages to Horton Brothers and personal injury protection benefits to Mr. Lucas.
3. These damages were paid by Progressive in connection with an accident that allegedly occurred between Mr. Lucas while operating a Horton Brothers vehicle and Defendants train at the rail crossing with Old Baltimore Pike in Newark, Delaware.
4. After National Railroad Passenger Corporation (hereinafter "Amtrak") removed the case to this Honorable Court on October 20, 2005, Defendants/Third Party Plaintiffs filed an Answer to Plaintiff's Complaint on October 26, 2005.
5. Amtrak's Removal and this Courts Jurisdiction is based upon the fact Defendant/Third Party Plaintiff Amtrak is a corporation created by an Act of Congress codified at 49 U.S.C. § 24301, et seq, and the Federal Government owns and owned during all relevant times hereto more than one-half of the capital stock of Amtrak, and therefore, this Honorable Court has federal question jurisdiction under 28 U.S.C. §1331, given that Defendant Amtrak was created by an Act of Congress, wherein the United States is the owner of more than one-half of its capital stock. Eichelberg v. National Railroad

Passenger Corp., 57 F.3d 1179 (2nd Cir. 1995).

6. Upon information and belief, the third-party defendants Jackie Lucas and Rhonda Lucas are competent adult residents of the State of Delaware.
7. Third Party Defendants Jackie Lucas and Rhonda Lucas executed a General Release in favor of National Railroad Passenger Corporation on March 24, 2004. See Exhibit A, General Release of March 24, 2004.
8. The above referenced General Release was knowingly and voluntarily entered into by Jackie and Rhonda Lucas.
9. In this release the Lucas' agreed that "we agree to release, and to indemnify, defend and save harmless [Amtrak] of and from any and all claims, demands and causes of action . . . , related to any bills, costs, charges, expenses, liens or other sums claimed to be owed or in any way related to any and all medical and health care and services rendered on account of our injuries, damages and losses, including, but not limited to, any liens, medical or heath care provider, insurer , government authority or agency, public or private social welfare agency, or any other person, firm, association, corporation or entity.
10. Third Party Defendants Rhonda and Jackie Lucas owe Defendants/Third Party Plaintiffs a defense and indemnification.
11. If the Plaintiff Progressive is damaged as alleged in its Complaint, such damages were proximately caused by the negligence of Third Party Defendant Jackie Lucas.

COUNT I

NATIONAL RAILROAD PASSENGER CORPORATION vs. JACKIE LUCAS
NEGLIGENCE

12. Third Party Plaintiffs incorporate by reference paragraphs 1 through 11 as if set forth herein.
13. The collision and damages from the above referenced collision were proximately caused by the negligence of Third Party Defendant Jackie Lucas and consist of, but are not limited to, the following:
 - (a) Failing to maintain a proper, constant visual lookout;
 - (b) Failing to yield the right-of way;
 - (c) Failing to maintain his vehicle under proper control;
 - (d) Operating his vehicle in a careless and/or imprudent manner;
 - (e) Operating his vehicle in a reckless manner;
 - (f) Operating his vehicle in an inattentive manner;
 - (g) Operating his vehicle at a speed greater than was prudent under the conditions then existing;
 - (h) Failing to bring his vehicle to a proper stop;
 - (i) Failing to follow all rules, regulations and statutes with regards to proper procedures for operating a vehicle at or around a train crossing; and
 - (j) was otherwise negligent *per se* and/or in common law as may be learned through further investigation and discovery.

WHEREFORE, Defendant/Third Party Plaintiffs National Railroad Passenger Corporation a/k/a Amtrak, Ronald F. Annone, and Norfolk Southern Corporation requests that this Honorable Court enter judgment in its favor and against Third-Party Defendants, Rhonda Lucas and Jackie L. Lucas, Jr. individually, or, in the alternative, should judgment be entered in favor of the plaintiff and against Defendant/Third Party Plaintiffs, Defendant/Third Party Plaintiffs requests that this Honorable Court hold Rhonda Lucas and Jackie L. Lucas, Jr. , individually liable or jointly or severally liable, or liable over to Defendant/Third Party Plaintiffs by way of contribution or indemnity for all damages, fees and costs, associated with such judgment, along with any other relief which this Court deems just and appropriate under the circumstances.

COUNT II

**NATIONAL RAILROAD PASSENGER CORPORATION vs. RHONDA AND
JACKIE LUCAS**

DEFENSE AND INDEMNIFICATION

14. Third Party Plaintiffs incorporates by reference paragraphs 1 through 13 as if set forth herein.
15. On March 24, 2004, Third Party Defendants Rhonda Lucas and Jackie L. Lucas, Jr. executed a General Release in favor of Third Party Plaintiff National Railroad Passenger Corporation and all other parties, associations and corporations jointly or severally liable, from all claims.
16. The Release of March 24, 2004, contained language wherein the Third Party Defendants agreed to Release, and to Indemnify, defend and save harmless

Releasees.

17. This Release was entered in favor of Defendant/Third Party Plaintiffs National Railroad Passenger Corporation a/k/a Amtrak, Ronald F. Annone, and Norfolk Southern Corporation.
18. Third Party Defendants are required pursuant to the General Release of March 24, 2004 to indemnify and defend Third Party Plaintiffs.
19. As per the General Release, Third Party Defendants are responsible for indemnifying Third Party Plaintiffs against any and all damages which may be awarded to the plaintiff.
20. As per the General Release, to the extent that judgment is entered in favor of the plaintiff and against Defendants/Third Party Plaintiffs, Third Party Defendants Rhonda and Jackie Lucas are liable to Defendants/Third Party Plaintiffs for any and all damages awarded to the plaintiff Progressive.

WHEREFORE, Defendant/Third Party Plaintiffs National Railroad Passenger Corporation a/k/a Amtrak, Ronald F. Annone, and Norfolk Southern Corporation requests that this Honorable Court enter judgment in its favor and against Third-Party Defendants, Rhonda Lucas and Jackie L. Lucas, Jr. individually, or, in the alternative, should judgment be entered in favor of the plaintiff and against Defendant/Third Party Plaintiffs, Defendant/Third Party Plaintiffs request that this Honorable Court hold Rhonda Lucas and Jackie L. Lucas, Jr. , individually liable or jointly or severally liable, or liable over to Defendant/Third Party Plaintiffs by way of contribution or indemnity for all damages, fees and costs, associated with such

judgment, along with any other relief which this Court deems just and appropriate under the circumstances.

GALLAGHER, ROWAN & EGBERT P.C.

BY: /s/

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Amtrak, Ronald F. Annone, and Norfolk
Southern Corporation

Date: November 8, 2005

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PROGRESSIVE NORTHWESTERN
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CERTIFICATE OF SERVICE

I, Jessica E. Gensler Lippy, Esquire, attorney for National Railroad Passenger Corporation a/k/a Amtrak, Ronald F. Annone, and Norfolk Southern Corporation , hereby certify that a true and correct copy of the Third Party Complaint, was served via first class mail, postage prepaid to:

Roger D. Landon, Esquire
1011 Centre Road
Suite 210
Wilmington, DE 19805

and via personal service

Rhonda Lucas and Jackie L. Lucas, Jr
1004 S. Gerald Drive
Newark, DE 19713

GALLAGHER, ROWAN & EGBERT P.C.

BY: /s/

JESSICA E. GENSLER LIPPY, ESQUIRE
Attorney I.D. No. 4426
Silverside Carr Executive Center
501 Silverside Road, Suite 94
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(302) 798-2779
Attorney for Defendants/Third Party Plaintiffs

National Railroad Passenger Corporation a/k/a
Amtrak, Ronald F. Annone, and Norfolk
Southern Corporation

Date: November 8, 2005